

ON PETITION FOR REHEARING

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-7720

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DENNY R. GULLETT,

Defendant - Appellant.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. John T. Copenhaver, Jr., District Judge. (CR-94-17, CA-97-456-2)

Submitted: June 5, 2003

Decided: June 25, 2003

Before NIEMEYER and MICHAEL, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Cheryl Johns Sturm, Chadds Ford, Pennsylvania, for Appellant.
Michael Lee Keller, OFFICE OF THE UNITED STATES ATTORNEY,
Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Denny R. Gullett was convicted following a jury trial of one count of maliciously damaging and destroying and attempting to damage and destroy by means of an explosive a building used in interstate commerce that resulted in death in violation of 18 U.S.C. § 844(i) (2000). Gullett was sentenced to thirty-eight years in prison and five years of supervised release. Gullett filed a 28 U.S.C. § 2255 (2000) motion to vacate his sentence. The magistrate judge recommended dismissal of Gullett's claims. Following an evidentiary hearing on the issue of whether there had been improper contact during trial between a juror and the prosecution and a prosecution witness, the district court denied the motion.

An order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 123 S. Ct. 1029, 1040 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir.), cert. denied, 534 U.S. 941 (2001). We have independently reviewed the record and conclude that Gullett has not

made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED